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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/733,321 | 12/12/2003 | Dennis Erickson | S758 0002/TAR | 9077 |

720 7590 04/27/2007
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CANADA

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| EXAMINER |
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HORTON, YVONNE MICHELE

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| ART UNIT | PAPER NUMBER |
|----------|--------------|

3635

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
|--|------------|---------------|
| 3 MONTHS | 04/27/2007 | PAPER |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/733,321 | ERICKSON ET AL. | |
| | Examiner | Art Unit | |
| | Yvonne M. Horton | 3635 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 12-18, 20-32, 34-41, 43-45 and 47-55 is/are pending in the application.
- 4a) Of the above claim(s) 15, 17, 20, 27, 28, 31, 32 and 34-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-14, 16, 18, 21-26, 29, 30, 41, 43-45 and 47-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/12/03 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3635

DETAILED ACTION

Election/Restrictions

Claims 15,17,20,27,28,31-32,34-40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species of tracks, there being no allowable generic or linking claim. Election was made **without** traverse in the telephone conversation with examiner Horton on 02/27/07.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

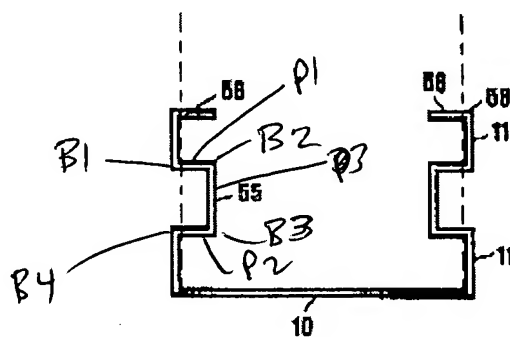
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-7,12-14,16,18,21-26,29,30,41,43-45,47-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over "STEELER INC. – Deflection Track" in view of US Patent #6,374,558 to SUROWIECKI. In reference to claims 1,43,47,53-55, "STEELER INC. – Deflection Track" discloses a track including a web (W) and one or more deformable legs (L), see attachment, having a deformable portion (D) at a distal

edge thereof with three bends. “STEELER INC. – Deflection Track” discloses the basic claimed track except for the particulars of the deformable portion. SUROWIECKI, figure 9 teaches the use of a track (10) wherein the deformable portion includes at least four bends (B1-4). It would have been obvious to one having ordinary skill in the art at the

**Fig. 9**

time the invention was made to provide the track of "STEELER INC. – Deflection Track" with the four bend portion of SUROWIECKI in order to provide the track with more versatility in bending. Regarding claims 2,12,21,41,45,48, the deformable portion (D) consists of a unitary piece of material and is resiliently deformable using one or more legs. In reference to claims 3,5,5,7,18,34,43,44,47,49,50-55, the deformable portion (D) allows the track to compress in the longitudinal direction and expand orthogonally. In regards to the angles formed in the deformable portion, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select an angle suitable for the use intended as an obvious matter of design choice. For instance, in areas where earthquakes are common perhaps an angle that is wider to compensate for the extra forces imposed thereon would be appropriate. Regarding claims 4,13,14,16,22-26,29,30, the deformable portion (D), as modified by SUROWIECKI has

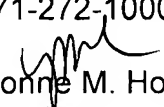
a first angled portion (P1), a second angled portion (P2) and a central portion (CP) between the four bends (B1-4), and a flat portion FP) between deformable portions (D) wherein the deformable portion extends outwardly of the track and the track is coupled to opposite ends of another track near the flat portions (FP).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (571) 272-6845. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on (571) 272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

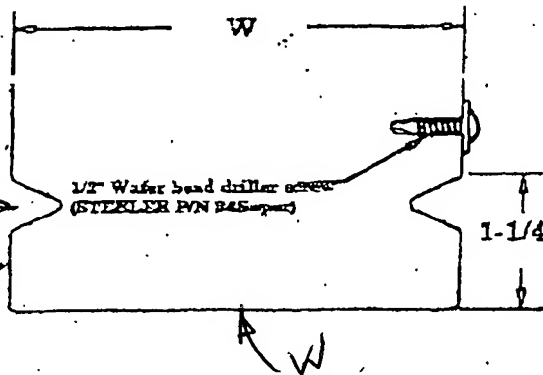
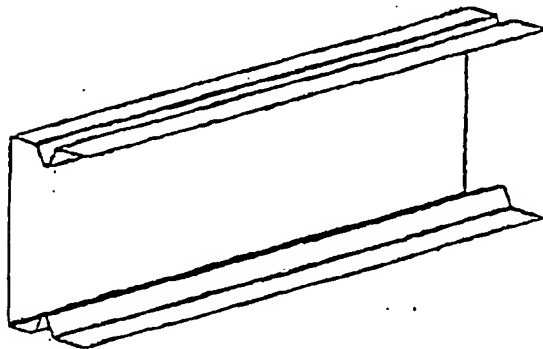

Yvonne M. Horton
Examiner
Art Unit 3635

EXAMINER'S ATTACHMENT

This page is not included in ICBO ES Report #4389

DFT (Deflection Track)

STEELER INC.
DRYWALL CONSTRUCTION SUPPLY



STEELER INC. is introducing an economical alternative for ceiling connections of non-load bearing walls. Our new deflection track may allow ceilings to deflect under loading without affecting the wall beneath. Performance is based upon gauge and must be determined by the Job Engineer. In many cases a slip track application may be changed to deflection track saving both material and labor at installation.

2/16/04

PAGE 56

19028 Marlin Luther King Jr. Way Seattle, WA 98178 - (206) 775-2200 - Fax (206) 775-2201

This page is not included in ICBO ES Report #4389

Materials

- Light gauge steel meeting the physical requirements of A.S.T.M. A448 grade A, C or D, and galvanized in accordance with A.S.T.M. A-625
- Shape and Dimensions as shown at left.
- Length = 10' - 0"
- Widths available:
3-1/2", 4-5/8", 4", 6"
- Gauges available:
25, 20 & 18
- Packaging = Varies on Order

Installation

- Walls assembled with deflection track are assembled similar to standard load bearing walls except that stud lengths are 1-3/8 inch shorter to allow for the deflection track's equivalent height.

This 1-1/4 inch track height is able to expand and contract to allow for the ceiling deflection.

Standard lower track is used in these walls. Sheathing is done as normal except that it must be held back from the top of the track.

- Walls should be framed with a 1/2" Wafar head drillor screw (STEELER P/N 245super).
- Sheathing - Use a 1-1/8" drywall screw (STEELER P/N 258) to secure 1/2" drywall and a 1-1/4" drywall screw (STEELER P/N 365) to secure 5/8" drywall to either 25 or 20 gauge studs. Use a 1 1/4" drywall drillor screw to attach to the 18 gauge studs (STEELER P/N 14).

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